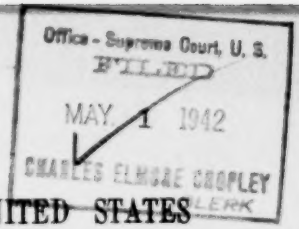

(4)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1201

ENGINEERS CLUB OF PHILADELPHIA,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

JOHN E. HUGHES,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 1201

ENGINEERS CLUB OF PHILADELPHIA,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

The Engineers Club of Philadelphia, by John E. Hughes, its attorney, prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above case on November 3, 1941. Motion for a new trial was filed January 2, 1942 and allowed February 2, 1942 and the judgment ordered to stand.

Opinion Below.

The findings and opinion of the Court of Claims (R. 6 to 26) are reported in 42 F. Supp. 182.

Jurisdiction.

A timely motion for new trial was allowed February 2, 1942 and the original judgment ordered to stand (R. 5). This petition for certiorari was filed May 1, 1942.

Statute and Regulation Involved.

These are set forth in the appendix.

Questions Presented.

Is a former judgment of the United States District Court in a suit between the same parties, holding petitioner not to be a social club and non taxable, res judicata for a subsequent period in which its charter, purposes and activities were found to be the same as the period covered by the District Court judgment?

If not, is petitioner taxable as a social club?

Statement.

Facts Bearing on Res Judicata.

Petitioner paid dues tax from 1917 until 1921, when the then Commissioner of Internal Revenue ruled it was not a social club and not taxable as such and refunded the tax it had paid. In 1932 the then Commissioner overruled the decision of his predecessor and held it taxable as a social club. (Finding 8, R. 9.)

Petitioner paid the tax from then to July, 1935 when it sued both the United States and the Collector in the district court, for different parts of this period, to recover said tax on the ground that it was not a social club and not taxable. After a long trial the district court rendered its findings of fact and conclusions of law and held petitioner not a social club and not taxable and entered judgment for the recovery of the tax paid. (See finding 10, R. 12-14.)

The government appealed said judgments to the Circuit Court of Appeals but dismissed its appeal and paid them, on petitioner's agreeing to waive interest. (R. 14.)

The Court of Claims made the following finding of fact in this suit:

> "During the period involved in the suits before the District Court and the period involved in this suit plaintiff's charter and its purposes and activities were of substantially the same nature and extent." (R. 14, finding 11.)

FACTS BEARING ON SOCIAL CLUB QUESTION.

Petitioner is an organization of professional engineers. Since the tax was enacted in 1917 uniform treasury regulations have stated, without change, and now state that the purpose of a club is the test and that "the tax does not attach to the dues of a * * * commercial club, * * * trade organization, or the like merely because it has incidental social features". (See Appendix, p. 12 for regulation.)

Petitioner's charter stated its purpose thus:

> "To promote the Arts and Sciences connected with Engineering, by means of periodical meetings for reading and discussion of professional papers, and the circulation by publication among its members and others of the information thus obtained, and for social intercourse!" (Finding 1, R. 6.)[1]

Failure to File Powers of Attorney.

This issue, raised in the concurring opinion which is based solely on that ground, was decided in petitioner's favor by the Court of Claims in *Builders Club of Chicago*

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[1]At the time this charter was obtained it was necessary to include the phrase "for social intercourse" to get a charter for a club. See Union Club of Pittsburgh v. Heiner, 99 F. (2d) 259, 263.

v. *United States,* 83 C. Cls. 556, 14 F. Supp. 1020, and in the case at bar the majority of the court below indicated no intention to depart from that decision and the question is not raised here.

Specification of Errors to be Urged.

The Court of Claims erred:

1. In failing to hold that the judgment of the District Court in the suit against the United States was res judicata of the same issue in this case.

2. In failing to hold that the judgment of the District Court in the suit against the Collector was res judicata of the same issue in this case.

3. In failing to hold petitioner was not taxable as a social club.

Reasons for Granting the Writ.

1. As Judge Whitaker states in his concurring opinion (R. 19) the decision of the majority of the court below is in conflict with the decision of this Court in *Tait* v. *Western Maryland Ry. Co.,* 289 U. S. 620.

Also the decision below means there is no such thing as res judicata in a club tax case or similar tax case, where different periods are involved although the facts are the same in both and opens the way to endless litigation.

2. Even if this were not so the decision below is, on the issue of whether plaintiff is a social club, in conflict with the following decisions holding the following clubs not taxable as social clubs: Cosmos Club of Washington, 42 F. (2d) 321; Bankers Club of New York, 37 F. (2d) 982; Builders Club of Chicago, 58 F. (2d) 503; Chemists Club of

New York, 64 C. Cls. 156; Columbia University Faculty Club in *Tidwell* v. *Anderson,* 72 F. (2d) 685 (C. C. A. 2nd).

In its response to the petition for certiorari in *Army & Navy Club* v. *United States,* No. 656 herein, October term 1931, cer. den. 285 U. S. 548, the government stated as follows at page 4 thereof:

> "The provision of the Treasury regulations that a club with social features is not a social club unless these features are not a 'material' purpose but are 'subordinate and merely incidental' to the furtherance of a non social purpose, has given rise to confusion in the administration of the law and has caused widespread conflict of judicial decision. In some cases it has been held, erroneously as we contend, that if a predominant non social purpose can be established, then any other purpose of a social nature is merely incidental. * * * Each case of this kind must depend upon the purposes and activities of the particular club, but the confusion in the decisions dealing with clubs which offer extensive social opportunities to their members, although organized for purposes not exclusively social, is such that the question presented in this case seems to us worthy of review in this court."

Since the government made that statement the decisions have increased rather than dispelled the confusion. As said in the dissenting opinion of Judge Learned Hand in *Tidwell* v. *Anderson,* 72 F. (2d) 684, 688:

> "The decisions have left the test chaotic."

The decision below on the res judicata issue, if upheld, will greatly increase litigation under this section of the statute and many of the cases already decided will be again litigated and repeatedly relitigated, especially if the present chaotic state of the law is not clarified.

This phase of the question never has been passed on by this Court and for the foregoing reasons ought to be settled.

All of which is respectfully submitted.

JOHN E. HUGHES,
Counsel for Petitioner,
105 West Adams Street,
Chicago, Illinois.

BRIEF FOR PETITIONER.

Petitioner submits that the judgments in its favor in the prior suits, one against the United States and the other against the Collector for the immediately adjoining day to the first day here involved are or at least one of them is res judicata of the question here, in view of the finding that petitioner's purposes and activities for the period involved in this suit and the period involved in the former suits were the same.

The consequences of upholding the decision below will be to open the road to endless and repeated litigation not only of all club tax cases but of other tax cases involving similar questions such as the question whether a corporation is charitable and thus exempt under the income and social security tax laws. It means res judicata is a non existent doctrine in this field. For example the case of the Washington Cosmos Club cited in the petition and every other club can be relitigated every time it makes a tax payment. Also petitioner can go back to the District Court and sue the United States again and again or sue the Collector and have Jury trials.

In his concurring opinion in the case at bar Judge Whittaker said (R. 19-20):

> "I think the decision of the District Court for the Eastern District of Pennsylvania, holding that this taxpayer was not a social club, is res judicata in this proceeding and precludes us from inquiring whether or not it was in fact a social club. I think we are required to so hold by the decision of the Supreme Court in Tait *v.* Western Maryland Railway Company, 289 U. S. 620, 623. The testimony in this case is uncontradicted that the purposes and activities of the club in the year now before us were the same as in the year before the

> District Court. This being true, the judgment in the former proceeding, that the plaintiff was not a social club, is conclusive here. Tait *v.* Western Maryland Railway Co., supra, so holds."

Also the holding of the majority of the court below on the res judicata point conflicts with the view of the Board of Tax Appeals. See *Mallery*, 42 B. T. A. 793.

Furthermore, the holding of the majority of the court below on res judicata cannot be reconciled with the following fundamental principles of res judicata doctrine. According to 30 American Jurisprudence, sec. 165, page 910, it rests on the rule that:

> "Public policy and the interest of litigants alike require that there be an end of litigation which without the doctrine of res judicata would be endless."

Again in the same volume, at section 178 (citing many decisions of this Court) it is said:

> "It is a fundamental principle of jurisprudence that material facts or questions which were in issue in a former action, and were there admitted or judicially determined are conclusively settled by the judgment rendered therein, and that such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties or their privies regardless of the form the issue may take in the subsequent action whether the subsequent action involves the same or a different form of proceeding or whether the second action is upon the same or a different cause of action, subject matter, claim or demand, as the earlier action."

In the case at bar and in the former cases in which the judgment relied on as res judicata was rendered the statute and regulations applicable, the purposes and activities of the petitioner and the issue were all the same.

The case boils down to the fact that the Court of Claims undertook to overrule the District Court and also paid no attention whatever to the principle of adherence to precedent, which this Court in *Radio Corp.* v. *Radio Laboratories*, 293 U. S. 1, at page 8, declared might bring one not a party to a prior suit out at the same place as the doctrine of res judicata if "there is substantial identity of the evidence".

The Court of Claims also held the judgment in the suit against the Collector was not res judicata in a suit against the United States. That question is now under consideration here but even if the Court of Claims was right one of the judgments relied on here was rendered in a suit against the United States and to that res judicata clearly applies.

The Court of Claims in its opinion said:

> "We are asked, then, to close our eyes and minds then to the facts actually before us, and to give to plaintiff a judgment which we would not give to any other plaintiff whose cause of action had equal merit. * * * The doctrine of res judicata should not be so extended."

In the first place that is exactly what the doctrine is. See *United States* v. *Moser*, 266 U. S. 236. It applies to tax cases the same as to other cases. *Tait* v. *Western Maryland Ry. Co.*, 289 U. S. 620, 623, and does not depend on whether the judgment invoked is right or wrong.

The Social Club Question.

Since the dues tax was enacted in 1917 the definition in the various regulations of a social club has been the same. For it see appendix, page 12.

During that time Congress repeatedly reenacted the provision without change and thus made the regulation part

of the law under familiar doctrine. *Helvering* v. *Winmill*, 305 U. S. 79 and cases cited at page 83.

As said in *Bankers Club* v. *United States*, 37 F. (2d) 982:

> "It is true the club's furnishings are elaborate and expensive, its quarters inviting and especially designed for its intended purpose, its resources great, its income large and its membership totals in excess of 2,200. * * * Neither the taxing act nor the regulations of the Bureau discriminate between an imposing organization and one less ornate and attractive. The issue is the purpose of the club, and, if it falls within the class specifically pointed out by the Act and the regulations as exempt from taxation, we cannot refuse to so hold, especially so when there exists no proof of any probative worth to the contrary."

In the case at bar the test for membership instead of being social is professional as in a bar or medical association.

Moreover, Article 25, Regulations 43 states:

> "When a club or organization has been held not to be a social, athletic or sporting club or organization it need not thereafter make a return or any further showing with respect to its status under the law, unless it changes the character of its organization or operations or the purpose for which it was originally created."

In the case at bar the finding of fact is that petitioner did not change its activities or its purpose. (Finding 11, R. 14.) Consequently this regulation applies.

The Commissioner did not reject this claim because he held petitioner was a social club solely because it failed to file powers of attorney from its members. (Finding 9, R. 11.)

On the same day the claim was rejected petitioner filed this suit in the Court of Claims which court in *Builders Club of Chicago,* 14 F. Supp. 1020, had held the regulation requiring powers of attorney from members invalid. The government did not seek review of that decision.

Three months later and after issue was joined in this suit the Commissioner, obviously at the prompting of his counsel, issued a further letter purporting to reject the claim (not then before him) on the ground petitioner was a social club.

For the foregoing reasons the writ should be granted and the decision below reversed.

All of which is respectfully submitted.

JOHN E. HUGHES,
Counsel for Petitioner.

APPENDIX.

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 413. CLUB DUES TAX.

(a) Section 501 of the Revenue Act of 1926 is amended to read as follows:

"Sec. 501. (a) There shall be levied, assessed, collected, and paid a tax equivalent to 10 per centum of any amount paid—

"(1) As dues of membership fees to any social, athletic, or sporting club or organization, if the dues or fees of an active resident annual member are in excess of $25.00 per year; or

"(2) As initiation fees to such a club or organization, if such fees amount to more than $10, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of $25 per year.

ART. 36, Regulations 43. SOCIAL CLUBS.—"Any organization which maintains quarters or arranges periodical dinners or meetings, for the purpose of affording its members an opportunity of congregating for social intercourse, is a "social * * * club or organization" within the meaning of the Act, unless its social features are not a material purpose of the organization but are subordinate and merely incidental to the active furtherance of a different and predominant purpose, such as, for example, religion, the arts, or business. The tax does not attach dues or fees of a religious organization, chamber of commerce, commercial club, trade organization, or the like, merely because it has incidental social features, but if the social features are a material purpose of the organization, then it is a "social * * * club or organization" within the meaning of the Act. An organization that has for its exclusive or predominant purpose religion or philanthropic social service (or the advancement of the business or commercial interests of a city or community) is clearly not a "social * * * club or organization."

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 1201

ENGINEERS CLUB OF PHILADELPHIA, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 14–26) is reported in 42 F. Supp. 182.

JURISDICTION

The judgment of the Court of Claims was entered November 3, 1941. (R. 5.) A motion for a new trial was filed on January 2, 1942. (R. 5.) On February 2, 1942, the court ordered that petitioner's motion be allowed, amended findings filed with the former judgment and opinions to stand. (R. 5.) The petition for a writ of certiorari was filed May 1, 1942. (R. 27.) The jurisdiction of

this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTIONS PRESENTED

1. Is a final decision of a United States District Court holding that a club is not a social club during a certain taxable period *res judicata* as to whether the club is a social club in a later period in a suit brought in the Court of Claims?

2. If such a decision is not *res judicata,* the question is whether, under the Acts of Congress which impose a tax on the dues and initiation fees of social, athletic, or sporting clubs or organizations, the club here involved was a social club during the taxable period and hence subject to the tax?

STATUTE AND REGULATIONS INVOLVED

The applicable portions of the statute and regulations involved are set forth in the Appendix (*infra,* pp. 9–12).

STATEMENT

The special findings of fact of the Court of Claims (R. 6–14) may be summarized as follows:

Petitioner is a corporation organized under the laws of Pennsylvania, and located at 1317 Spruce Street, Philadelphia. It was incorporated in 1892 for the following purposes (R. 6):

> * * * to promote the Arts and Sciences connected with Engineering, by means of

> periodical meetings for the reading and discussion of professional papers, and the circulation by publication among its members and others of the information thus obtained, and for social intercourse.

The petitioners by-laws provided that the membership should be composed of professional engineers or others with engineering or similar experience. Cards were issued on request of a member to the women of his household, which gave the holders the privileges of the ladies' reception room and dining room. (R. 6–7.)

Petitioner had a number of affiliated organizations, all of which were technical organizations which held meetings at the clubhouse. (R. 7.)

About once a month for seven or eight months during the year get-together dinners were held at the club at which there might be speaking or other forms of entertainment followed by a general social gathering, sometimes including dancing. Luncheon and dinner were served daily. The luncheons were largely attended, the attendance averaging from 100 to 125 persons. The attendance at dinner was small, except on special occations. (R. 8.)

The club building was owned by petitioner and was a four-story brick building with a frontage of 50 feet and a depth of 163 feet. The first two floors and part of the third floor were taken up with dining rooms, reception rooms, the auditorium, a library, and other rooms for meetings.

There were seven sleeping rooms on the third floor and nine on the fourth floor. In the basement were washrooms, a pool table and four card tables, and a bar. Magazines and newspapers were available in the lounge and there was a cigar stand in the lobby. (R. 8–9.)

The club employed an average of 30 people as clerical and domestic workers. (R. 9.)

During the period from July, 1935 to January, 1938, petitioner paid as taxes on dues and initiation fees of its members a total of $6,261.43. (R. 9–10.) On March 17, 1938, petitioner filed a claim for refund for the taxes so paid upon the ground that the District Court for the Eastern District of Pennsylvania had held that the club was not subject to the dues tax. (R. 11.) Before acting upon this claim for refund, the Commissioner demanded the submission of powers of attorney by the members of the club authorizing the club to act as their agent in the collection of the taxes. Upon the failure of the petitioner to furnish these powers of attorney, the Commissioner rejected the claim on the ground that such powers of attorney had not been furnished. On the same day, suit for the recovery of such taxes was filed in the Court of Claims. The Commissioner later wrote to the petitioner stating that it was held that the club was a social club or organization. (R. 11–12.)

On May 14, 1936, two suits had been filed by petitioner in the United States District Court for the

Eastern District of Pennsylvania, one against W. J. Rothensies, Collector of Internal Revenue, and the other against the defendant, United States of America. Both suits were for refund of taxes for periods prior to the taxable periods involved in this suit, and both were based upon the ground that the petitioner was not a social club. Both cases were defended upon the sole ground that petitioner was a social club and judgment was entered for petitioner in each. The opinion of the District Judge shows that upon the issue of whether petitioner was a social club the court found *inter alia* that the predominant purpose of the organization was not a social one and that the social features were subordinate and merely incidental to the active furtherance of the predominant purpose. Appeals from these judgments were perfected but subsequently a settlement was entered into and the appeals were dismissed. (R. 12–14.)

The club's charter, purposes and activities were of substantially the same nature and extent during the period in question as they were during the period involved in the District Court suits.

The Court of Claims made the following ultimate finding of fact (R. 14):

> Social activities constituted a material purpose of plaintiff club, and an important and substantial part of its activities during the period here in question.

ARGUMENT

1. It is well settled under the decisions of the Court of Claims and other courts that even though the predominant purpose of an organization is not social, the existence of social features which are an essential and material part of the organization's functions and not merely incidental makes it a social club within the meaning of the Revenue Acts. See Treasury Regulations 43 (Revised, June, 1932), Article 36 (Appendix, *infra*); *Army and Navy Club of America* v. *United States,* 53 F. (2d) 277 (C. Cls.), certiorari denied, 285 U. S. 548; *Union League Club of Chicago* v. *United States,* 4 F. Supp. 929 (C. Cls.); *The Lambs* v. *United States,* 8 F. Supp. 737 (C. Cls.), certiorari denied, 297 U. S. 713; *Duquesne Club* v. *United States,* 23 F. Supp. 781 (C. Cls.), certiorari denied, 306 U. S. 649; and *Duquesne Club* v. *Bell* (C. C. A. 3d), decided April 13, 1942, not yet officially reported, but found in 1942 Prentice Hall, Vol. 4, ¶ 62,642.

The earlier decisions of the court below which are relied on (Pet. 4–5)[1] do not establish a conflict which needs to be resolved by this Court. *Tidwell* v. *Anderson,* 72 F. (2d) 684 (C. C. A. 2d), does

[1] *Cosmos Club* v. *United States*, 42 F. (2d) 321 (C. Cls.); *Bankers' Club of America* v. *United States*, 37 F. (2d) 982 (C. Cls.); *Builders' Club of Chicago* v. *United States*, 58 F. (2d) 503 (C. Cls.); *Chemists' Club* v. *United States*, 64 C. Cls. 156.

not present any conflict with respect to the test of taxability to be applied (cf. p. 687). Every case in this field turns upon analysis of the activities of the particular organization involved.

2. The contention that the prior decisions of the District Court are *res judicata* is without merit, since the instant suit arises upon a different set of facts than was involved in the suits in the District court.[2]

Tait v. *Western Md. Ry. Co.*, 289 U. S. 620, did not present a similar situation. There the events sought to be tried in the second suit were the identical historical events which had been tried earlier. Cf. *Federal Trade Commission* v. *Raladam Co.*, No. 826, present Term, decided April 27, 1942.

3. In the event certiorari is granted, we intend to press the defense made in the court below that the petitioner cannot recover in any event since it failed to comply with the requirements of Article 54 of Treasury Regulations 43 (Revised, June, 1932), in that it did not furnish powers of attorney from the various members of the club who, through the club, paid the taxes which were sought to be recovered in the refund claim. This was urged by us below as the primary question

[2] Aside from this, the judgment in the suit against the Collector is not *res judicata* since the Collector and the United States may not be regarded as the same parties under the recent decision of this Court in *United States* v. *Nunnally Investment Co.*, No. 990, October Term, 1940.

and, while the majority opinion did not discuss it, the concurring opinion below was rested upon this ground. We think that that opinion is sound, in which event the questions presented by the petitioner are moot.

CONCLUSION

The decision of the court below is correct. There is no conflict of decision shown and the petition should be denied.

Respectfully submitted,

CHARLES FAHY,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
J. LOUIS MONARCH,
Special Assistants to the Attorney General.

MAY, 1942.

APPENDIX

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 413. CLUB DUES TAX.

(a) Section 501 of the Revenue Act of 1926 is amended to read as follows:

"SEC. 501. (a) There shall be levied, assessed, collected, and paid a tax equivalent to 10 per centum of any amount paid—

"(1) As dues or membership fees to any social, athletic, or sporting club or organization, if the dues or fees of an active resident annual member are in excess of $25 per year; or

"(2) As initiation fees to such a club or organization, if such fees amount to more than $10, or if the dues or membership fees, not including initiation fees, of an active resident annual member are in excess of $25 per year.

"(b) Such taxes shall be paid by the person paying such dues or fees.

* * * * *

SEC. 414. RETURNS OF ADMISSIONS AND DUES TAX.

(a) Section 502 (a) of the Revenue Act of 1926 is amended by striking out "monthly returns" and inserting in lieu thereof "returns".

(b) Section 502 (b) of such Act is amended by striking out "monthly return" and inserting in lieu thereof "return".

Treasury Regulations 43 (revised June, 1932), promulgated pursuant to the Revenue Act of 1926, as amended by the Revenue Acts of 1928 and 1932:

ART. 35. DETERMINATION OF CHARACTER OF CLUB.—The Act includes not only "clubs" but also "organizations" of a social, athletic, or sporting character. The purposes and activities of a club and *not its name* determine its character for the purpose of the tax. Every club or organization having social, athletic, or sporting features is presumed to be included within the meaning of the phrase, "any social, athletic, or sporting club or organization," until the contrary has been proved, and the burden of proof is upon it. Every such club or organization, therefore, unless it falls within the express exemption of the Act (see art. 38), must collect, return, and pay over the tax imposed by the Act, unless and until it has satisfied the Commissioner of Internal Revenue that it is not in fact "social, athletic, or sporting" within the meaning of the Act and as defined in these regulations. If any such club or organization claims that it is not in fact "social, athletic, or sporting," it shall submit to the collector its charter or constitution and by-laws, together with a statement showing its actual purposes, activities, practices, and facilities, the character of its expenditures, and such other evidence as may be requested. Upon consideration of the evidence submitted the collector will determine, if he can do so, whether or not such club or organization is included within the provisions of the Act. If, however, the collector is in doubt as to whether or not the club or organization is "social, athletic, or sporting," he will refer the statement and accompanying papers to the Commissioner for decision. When a club or organization has been held not to be a "social, athletic, or sporting" club or

organization it need not thereafter make a return or any further showing with respect to its status under the law, unless it changes the character of its organization or operations or the purpose for which it was originally created. Collectors will keep a list of all clubs or organizations held not to be "social, athletic, or sporting" clubs or organizations, to the end that they may occasionally inquire into their status and ascertain whether or not they are observing the conditions upon which their exemption is predicated. If the collector decides that the club or organization is included within the provisions of the Act and the club or organization is not satisfied with his decision, it may request that the matter be referred to the Commissioner of Internal Revenue at Washington for a ruling.

ART. 36. SOCIAL CLUBS.—Any organization which maintains quarters or arranges periodical dinners or meetings, for the purpose of affording its members an opportunity of congregating for social intercourse, is a "social * * * club or organization" within the meaning of the Act, unless its social features are not a material purpose of the organization but are subordinate and merely incidental to the active furtherance of a different and predominant purpose, such as, for example, religion, the arts, or business. The tax does not attach to dues or fees of a religious organization, chamber of commerce, commercial club, trade organization, or the like, merely because it has incidental social features, but, if the social features are a material purpose of the organization, then it is a "social * * * club or organization" within the meaning of the Act. An organization that

has for its exclusive or predominant purpose religion or philanthropic social service (or the advancement of the business or commercial interests of a city or community) is clearly not a "social * * * club or organization." Most fraternal organizations are in effect social clubs, but if they are operating under the lodge system, or are local fraternal organizations among the students of a college or university, payments to them are expressly exempt.

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